

**RULES
OF
TENNESSEE DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-8
THE INITIAL AND FINAL ORDER**

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1240-5-8-.01 APPEAL PROCESSING TIME FRAMES.

- (1) The time frames in State Rule 1240-5-8-.01 are an administrative requirement for the Department and may not be used as a basis for overturning the Department's action if a decision is not made within the specified time frame, unless otherwise required by Federal or State law or Court Order. The time limit applies to the period extending from the date the request is received by the Department until the date the Final Order is entered, unless otherwise specified.
- (2) State Rule 1240-5-1-.05 sets forth the time limits for processing appeals for Vocational Rehabilitation Services.
- (3) State Rule 1240-6-11-.02 sets forth the time limits for processing appeals related to the Randolph Sheppard Act and the Tennessee Business Enterprises Program.
- (4) The maximum time limit for processing appeals is ninety (90) days for the Families First Program and Services Programs, except as otherwise specified by these rules or laws or regulations specifically applicable to a program.
- (5) Refugee Cash Assistance Program appeals will be processed within sixty (60) days from the date of the hearing request.
- (6) The maximum time limit for processing appeals is ninety (90) days for TennCare Standard or TennCare Medicaid.
- (7) Food Stamp Appeals will be processed within sixty (60) days. The postponement of the scheduled hearing in Food Stamp Appeals shall not exceed thirty (30) days, and the time limit for processing the Food Stamp appeal shall be extended because of:
 - (a) Illness of the appellant;
 - (b) Delay in obtaining medical evidence; or
 - (c) Because of circumstances beyond the control of the appellant or the Department.
- (8) 7 C.F.R. § 225.13 governs appeals in the Summer Food Service Program and the maximum time limit for processing appeals is nineteen (19) days for the Summer Food Service Program as follows:
 - (a) The time period allowed for filing the appeal, where actions are appealable as specified in 7 C.F.R. § 225.13(a), is ten (10) days from the date on which the notice of action sent by certified mail return receipt, is received. The appeal must be in writing.

(Rule 1240-5-8-.01, continued)

- (b) The appellant is allowed to refute the charges in the notice of action in person, or by filing written documentation with the review official. If the appeal letter does not specifically request a hearing, a review of written documentation in lieu of a hearing will occur. To be considered, written documentation must be submitted by the appellant within seven (7) days of submitting the appeal. An appellant is allowed the opportunity to review information upon which the action described in the notice of action was based.
 - (c) If the appellant requested a hearing in the appeal letter, the appellant shall be given at least five (5) days advance written notice of the hearing date by certified mail return receipt.
 - (d) If the appellant requested a hearing in the appeal letter, the hearing will be conducted within fourteen (14) days of the receipt of the appeal. However, the hearing will not be held before the appellant's written documentation is received where the appellant has requested to submit the written documentation. The appellant may retain legal counsel or may be represented by another person.
 - (e) Within five (5) working days after receiving the written documentation, and where a hearing was not requested in the appeal letter, the administrative review official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested, of the official's determination.
 - (f) Within five (5) working days after the hearing has been held, when a hearing was requested in the appeal letter, the hearing official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested, of the official's determination.
 - (g) 7 C.F.R. § 225.13(11) requires the Program's administrative action to remain in effect during the appeal process.
 - (h) Participating sponsors and sites may continue to operate during an appeal of a termination.
 - (i) Reimbursement shall be paid for meals served during the appeal process if the administrative review determination overturns the Program's administrative action that was appealed.
 - (j) If the sponsor or site has been terminated for the reason of imminent dangers to the health or welfare of children, the operation shall not be allowed to continue during the appeal process and this reason shall be specified in the notice of action.
 - (k) The determination made by the hearing official is the final administrative determination provided under 7 C.F.R. § 225.13(12), and will become the Final Order and set forth the time limits for seeking judicial review.
- (9) 7 C.F.R. § 226.6(k)(5) governs appeals described in 7 C.F.R. § 226.6(k)(2) in the Child and Adult Care Food Program that are subject to administrative review by the state agency and the maximum time limit for processing appeals is sixty (60) days for the Child and Adult Care Food Program as follows:
- (a) 7 C.F.R. 226.6(k)(9) makes provision for abbreviated administrative reviews. The administrative review official must limit the administrative review to a review of written submissions concerning the accuracy of the Child and Adult Care Food Program's determination if the application was denied or the Program proposes to terminate an institution's agreement, because of the circumstances described in 7 C.F.R. 226.6(k)(9)(i) through (iv).
 - (b) The time period to file an appeal to request an administrative review of an action described in 7 C.F.R. § 226.6(k)(2) that is subject to administrative review by the state agency is fifteen (15)

(Rule 1240-5-8-.01, continued)

- days after the notice of the action to be taken or action proposed, sent by certified mail return receipt, is received. The appeal request for administrative review must be in writing.
- (c) The receipt of the appeal requesting an administrative review must be acknowledged by the Department within ten (10) days of receiving the request. The appellant may retain legal counsel or may be represented by another person.
 - (d) The appellant is allowed to inspect information on which the action was based. The information must be available for inspection from the date the appeal request is received.
 - (e) The appellant may dispute the findings contained in the notice of action in person, or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than thirty (30) days after receipt of the notice of action. If the written request for administrative review does not specifically request a hearing, a review of written information in lieu of a hearing will occur.
 - (f) At least ten (10) days advance notice of the hearing shall be given, if the appellant requested a hearing in the written appeal. The service of the advance notice of the hearing will be in accordance with State Rule 1240-5-4-.01.
 - (g) The determination of the administrative review official must be based solely on the information provided by the Department, the appellant, Federal and State laws, regulations, policies, and procedures governing the Child and Adult Care Food Program.
 - (h) The administrative review official must inform the appellant of the administrative review's outcome within sixty (60) days of the receipt of the appeal requesting administrative review. This sixty (60) day time frame is an administrative requirement and may not be used as a basis for overturning the action if the administrative decision is not made within this time frame.
 - (i) 7 C.F.R. § 226.6(k)(10) requires the Child and Adult Care Food Program's action to remain in effect during the administrative review. 7 C.F.R. § 226.6(k)(10)(i) through (iii) describes actions of the Department that are permitted or prohibited during the pendency of the administrative review.
 - (j) The determination made by the administrative review official is the final administrative determination provided under 7 C.F.R. § 226.6(k)(5)(x) and will become a Final Order and set forth the time limits for seeking judicial review.
- (10) The maximum time limit for processing appeals is ninety (90) days for the Child Support Program, unless otherwise specified by the Tennessee Code Annotated or by rule in Chapter 1240-2.
 - (11) The maximum time for processing license probation appeals for child care agencies pursuant to T.C.A. § 71-3-509(b)(2) and (3) is seven (7) business days following conclusion of the hearing.
 - (12) The maximum time for rendering a decision regarding the Department's assessment of a child care agency program under the provisions of Chapter 1240-4-7 is thirty (30) days following the conclusion of the hearing.
 - (13) The maximum time for processing license probation appeals for adult day care centers pursuant to T.C.A. § 71-2-409(2) and (3) is fifteen (15) days following the receipt of the appeal.

(Rule 1240-5-8-.01, continued)

- (14) Hearings on the denial, revocation or restriction of an adult day care center license shall be held within sixty (60) days of the receipt of the petition requesting an appeal of the licensing action by the Department.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 71-1-111 and 71-4-508; 20 U.S.C. §§ 107d-1 and 107b(6); 29 U.S.C. § 722(c); 42 U.S.C. § 1396 et seq. and 42 U.S.C. § 1396a(a)(5); 42 U.S.C. § 1761 and 1766; 7 C.F.R. §§ 225.13 and 226.6; 7 C.F.R. § 225.13(12) and 7 C.F.R. § 226.6(k)(5)(x); 7 C.F.R. § 273.15(c); 34 C.F.R. § 361.57(b)(1)(i), (e)(1) and (e)(3)(ii), and (g); 34 C.F.R. §§ 395.4 and 395.13; 42 C.F.R. §§ 431.10 and 431.244; 45 C.F.R. § 400.54 and 205.10(a)(16). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed January 20, 1984; effective February 19, 1984. Amendment filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-8-.02 INITIAL AND FINAL ORDERS.

- (1) The provisions of this subchapter shall apply to the Initial and Final Order, except Vocational Rehabilitation Services appeals which are governed under State Rule 1240-5-1-.05(9)(e) and (10) and Summer Food Service Program and Child and Adult Care Food Program appeals which are governed under State Rules 1240-5-8-.01(8) and 1240-5-8-.01(9).
- (2) The hearing official shall render an Initial Order. The Initial Order shall automatically become the Final Order fifteen (15) days after it is issued unless a timely Petition for Appeal, Petition for Reconsideration or Petition for a Stay of Effectiveness is filed with the Appeals and Hearings Division or the Administrative Procedures Division, as applicable. The Final Order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.
- (3) Contents of the Order.
 - (a) An Initial Order or a Final Order shall include conclusions of law, the policy reasons for the decision, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a Petition for Stay of Effectiveness.
 - (b) Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings.
 - (c) The Initial Order or Final Order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief of the initial or final orders and the time limits for seeking judicial review of the Final Order.
 - (d) An Initial Order or decision shall include a statement of any circumstances under which the Initial Order or decision may, without further notice, become a Final Order.
 - (e) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.
- (4) If an individual serving or designated to serve as a hearing official becomes unavailable, for any reason, before rendition of the Final Order or Initial Order or decision, a substitute shall be appointed as provided in T.C.A. § 4-5-302. The substitute shall use any existing record and may conduct any further proceedings as are appropriate in the interest of justice.
- (5) The hearing official may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(Rule 1240-5-8-.02, continued)

- (6) Unless such period is required to be otherwise for compliance with applicable Federal regulations as specified in Tennessee Department of Human Services, State Rule 1240-5-8-.01, or unless such period is waived or extended with the written consent of all parties, or for good cause shown, or unless any State or Federal law or regulation requires that the order be entered in a shorter period, an Initial Order or Final Order rendered pursuant to paragraph (2) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (5).
- (7) The hearing official shall send copies of the Initial and Final Order to each party.
- (8) Rule 1240-5-1-.05 sets forth the process for final orders in Vocational Rehabilitation Services appeals.

Authority: T.C.A. §§ 4-5-202, 4-5-302, 4-5-314, 4-5-315, 4-5-318, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c); and 34 C.F.R. § 361.57(e)(4) and (g). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed October 9, 1987; effective January 27, 1988. amendment filed February 26, 2007; effective May 12, 2007.

1240-5-8-.03 PUBLIC ACCESS TO FINAL ORDERS.

- (1) The record of the hearing and the Final Order will remain on file in the Appeals and Hearings Division State Office for any further inspection as may be needed by the parties or their representatives.
- (2) Hearing decisions are accessible to the public for inspection and copying, subject to the requirements of safeguarding information which is confidential under any provision of law or regulations. Those portions of any record that contain confidential information may be deleted prior to providing access to the final order.
- (3) The hearing record as specified in State Rule 1240-5-7-.01 shall be maintained for, not less than three (3) years.

Authority: T.C.A. §§ 4-5-202, 4-5-218(a)-(d), 4-5-319, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(q)(1) and (5); 42 C.F.R. § 431.244(g) and 45 C.F.R. § 205.10(a)(14) and (19). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed July 10, 1980; effective August 25, 1980. Amendment filed December 17, 1982; effective March 17, 1983. Amendment filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-8-.04 REINSTATEMENT OF ASSISTANCE OR SERVICES.

- (1) If the Final Order is in favor of the appellant and retroactive benefits are in order, authorization will be given for retroactive benefits to be made in specific amounts and for specific months as provided for by program rules or state or federal regulations. The retroactive benefits will in no instance be authorized for any month prior to the month of incorrect action.
- (2) Any benefits which are reinstated shall be done so at the benefit level in effect during the time it was determined by the Final Order that the appellant was eligible.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12) and 71-1-111; 45 C.F.R. § 205.10(a)(4)(ii)(K) and (a)(18). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 17, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-8-.05 RECOVERY OF ASSISTANCE.

- (1) When the Final Order upholds the local office, any benefits due to continuation of assistance or services pending the hearing decision will be subject to recovery according to the procedures of the

(Rule 1240-5-8-.05, continued)

Department or as otherwise provided by law or regulation for recovering benefits except as provided in paragraph (2).

- (2) Vocational Rehabilitation services are subject to recovery where services were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative as provided in 1240-5-1-.05(5)(a).

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c)(7); 7 C.F.R. § 273.15(s)(2); 34 C.F.R. § 361.57(b)(4)(i); 42 C.F.R. § 431.230(b); 42 C.F.R. § 431.231(b); 45 C.F.R. § 400.54 and 45 C.F.R. § 205.10(a)(6)(i). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed February 26, 2007; effective May 12, 2007.

1240-5-8-.06 REPEALED.

Authority: 45 CFR §205.10(a)(6)(i), 7 CFR 273.15(s)(2), 42 CFR 431.230(b), and 42 CFR 431.231(b). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Repeal and new rule filed September 30, 2004; effective December 14, 2004. Amendment filed February 26, 2007; effective May 12, 2007.